

United States District Court
Southern District of Texas
FILED

In the United States District Court
Southern District of Texas
McAllen Division

NOV 16 2005

Michael N. Milby, Clerk

LUCINDA NATALIA RAMIREZ,
INDIVIDUALLY AND AS REPRESENTATIVE
OF THE ESTATE OF CARLOS O. RODRI-
GUEZ, AND AS NEXT FRIEND OF JULIAN
RODRIGUEZ, AZIAL RODRIGUEZ, CAIN
RODRIGUEZ, AND JACOB RODRIGUEZ,
MINOR CHILDREN, MARIA SANCHEZ
DE RODRIGUEZ AND ABUNDIO RODRI-
GUEZ S.

PLAINTIFFS,

VS.

CONTRACT FREIGHTERS, INC. AND
BERDINE MITCHELL,
DEFENDANTS,

M-05 - 374
Civil Case No. _____

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Lucinda Natalia Ramirez, Individually and as Representative of the Estate of Carlos O. Rodriguez, and as Next Friend of Julian Rodriguez, Azial Rodriguez, Cain Rodriguez, and Jacob Rodriguez, Minor Children, Maria Sanchez de Rodriguez and Abundio Rodriguez S., Plaintiffs, complaining of Contract Freighters, Inc. and Berdine Mitchell, Defendants, and would respectfully show unto the Court as follows:

**I.
FACTS**

1.1 This case involves personal injuries occurring as a result of a multi-vehicle accident on Saturday, November 12, 2005.

1.2 On November 12, 2005, Defendant Berdine Mitchell was driving a 2005 Red Kenworth T-600 Truck, vehicle identification number 1XKAD48X66J137629, and pulling a trailer, both of which were owned by Defendant Contract Freighters, Inc.

#725946

1.3 While driving northbound on Cage Road in Pharr, Hidalgo County, Texas, Defendant Mitchell made a left turn towards Ridge Road from the left lane, rather than from the central turning lane.

1.4 Defendant Mitchell proceeded across the southbound lane of Cage Road, and across the path of Carlos O. Rodriguez, who was traveling south on Cage Boulevard.

1.5 Carlos O. Rodriguez had the right of way at the time Defendant Mitchell traversed his lane.

1.6 Defendant Mitchell was in the course and scope of her employment, for purposes of interstate trucking, while she was operating the 2005 Red Kenworth T-600 Truck, vehicle identification number 1XKAD48X66J137629 on November 12, 2005.

1.7 Defendant Mitchell is an employee or agent of Contract Freighters, Inc.

1.8 Defendant Contract Freighters, Inc. does business as "C.F.I."

1.9 Carlos O. Rodriguez was driving his motorcycle south when the truck being driven by Defendant Mitchell came into his lane.

1.10 Carlos O. Rodriguez was unable to avoid colliding with the truck which suddenly and unexpectedly traversed his lane.

1.11 Carlos O. Rodriguez sustained serious bodily injuries while driving his motorcycle south when the truck being driven by Defendant Mitchell came into his lane.

1.12 As a result of the collision accident, Mr. Rodriguez sustained fatal injuries.

II. PARTIES

2.1 Plaintiff Lucinda Natalia Ramirez, is a natural person residing in Hidalgo County, Texas. She is bringing her individual wrongful death claim, as the wife of

Carlos O. Rodriguez, and a Survival claim on behalf of the Estate of Carlos O. Rodriguez.

2.2 Plaintiff, Julian Rodriguez is a natural person residing in Hidalgo County, Texas. He is a minor, and the biological son of Carlos O. Rodriguez and Lucinda Natalia Ramirez. He is represented in this lawsuit by his mother, Lucinda Natalia Ramirez.

2.3 Plaintiff, Arial Rodriguez is a natural person residing in Hidalgo County, Texas. She is a minor, and the biological daughter of Carlos O. Rodriguez and Lucinda Natalia Ramirez. She is represented in this lawsuit by her mother, Lucinda Natalia Ramirez.

2.4 Plaintiff, Cain Rodriguez is a natural person residing in Hidalgo County, Texas. He is a minor, and the biological son of Carlos O. Rodriguez and Lucinda Natalia Ramirez. He is represented in this lawsuit by his mother, Lucinda Natalia Ramirez.

2.5 Plaintiff, Jacob Rodriguez is a natural person residing in Hidalgo County, Texas. He is a minor, and the biological son of Carlos O. Rodriguez and Lucinda Natalia Ramirez. He is represented in this lawsuit by his mother, Lucinda Natalia Ramirez.

2.6 Plaintiff, Maria Sanchez de Rodriguez is a natural person residing in Hidalgo County, Texas. She is bringing her individual wrongful death claim, as the biological mother of Carlos O. Rodriguez.

2.7 Plaintiff, Abundio Rodriguez S. is a natural person residing in Hidalgo County, Texas. He is bringing his individual wrongful death claim, as the biological father of Carlos O. Rodriguez.

2.8 Defendant, Contract Freighters Inc. is a Missouri corporation with its principal place of business in Joplin, Missouri. It does business on a continuous and systematic basis in Texas and derives substantial profits in Texas. It can be served with process through its registered agent for service Larry Warren, Ball & Weed, 745 E. Mulberry, Suite 500, San Antonio, Texas 78212.

2.9 Defendant Berdine Mitchell, is a natural person residing in Davison, Michigan. She may be served with process by serving her at 7055 Driftwood Circle, Davison, Michigan, 48423.

III. VENUE

3.1 Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. § 1391(a)(2) because it is where the incident giving rise to this lawsuit occurred.

3.2 Venue is proper as to all Defendants, pursuant to 28 U.S.C. § 1391(a)(2).

3.3 Specifically, Berdine Mitchell's negligent driving actions occurred in Pharr, Hidalgo County, Texas and caused a fatal collision in that same location. Contract Freighters, Inc. directed Mitchell to operate a vehicle in Pharr, Hidalgo County, Texas.

IV. JURISDICTION

4.1 This Court has subject matter jurisdiction of this case pursuant to 28 U.S.C. § 1332 because Plaintiffs seek damages in excess of any minimum jurisdictional limits of this court and of the \$75,000.00 jurisdictional limits of the federal courts and because there is diversity between the parties.

4.2 This Court also has personal jurisdiction over all Defendants based on Defendants continuous and systematic contacts with Texas, and also because of the

specific facts of this case and the specific injuries caused by the accident in Texas, arising out of Defendants' commerce in Texas and travel on Texas roadways. The exercise of personal jurisdiction over these Defendants does not offend the notions of fair play and substantial justice.

**V.
CAUSES OF ACTION AGAINST CONTRACT FREIGHTERS, INC.**

5.1 Defendant Contract Freighters, Inc. committed acts of omission and commission, which collectively and severally constituted negligence, which was a proximate cause of the injuries to the Plaintiffs and the damages of the Plaintiffs.

5.2 Defendant Contract Freighters, Inc. is liable to Plaintiffs under the doctrine of *respondeat superior* for the conduct of Berdine Mitchell, because her negligence occurred while she was in the course and scope of his employment for Contract Freighters, Inc.

5.3 Defendant Contract Freighters Inc. had duty to exercise reasonable care in screening driving applicants, in training new drivers, and in assigning its fleet of drivers to transport products across interstate lines.

5.4 Defendant Contract Freighters Inc. breached the standard of care by failing to adequately screen, train, and assign Defendant Mitchell, and its failure to use reasonable care proximately caused the collision giving rise to this lawsuit.

5.5 Defendant Contract Freighters, Inc. is independently liable to Plaintiffs for negligently hiring, training, and supervising Berdine Mitchell.

5.6 Defendant Contract Freighters, Inc. is independently liable to Plaintiffs for negligently entrusting its tractor and/or trailer to Berdine Mitchell.

**VI.
CAUSES OF ACTION AGAINST BERDINE MITCHELL**

6.1 Defendant Berdine Mitchell committed acts of omission and commission, which collectively and severally constituted negligence, which was a proximate cause of the injuries to the Plaintiffs and the damages of the Plaintiffs.

6.2 Defendant Berdine Mitchell had a duty to exercise reasonable care and operate her tractor-trailor as a reasonable and prudent driver would under the same or similar circumstances.

6.3 Defendant Berdine Mitchell breached her duty to exercise reasonable care and operate her tractor-trailor as a reasonable and prudent driver would under the same or similar circumstances.

6.4 Defendant Berdine Mitchell was negligent in

- (a) failing to yield the right of way,
- (b) making an unsafe turn,
- (c) turning from an improper lane,
- (d) speeding,
- (e) failing to pay proper attention to the roadway and driving conditions,
- (f) failing to take proper evasive action, and
- (g) failing to timely and properly apply her brakes.

6.4 This negligence was a proximate cause of the accident and a proximate cause of the injuries of Plaintiffs.

VII. ACTUAL DAMAGES

7.1 As a result of Defendants' negligence, Carlos O. Rodriguez suffered serious bodily injury, mental anguish, pain and suffering.

7.2 Carlos O. Rodriguez died from the injuries he sustained in the collision on November 12, 2005.

7.3 Lucinda Natalia Ramirez, her four children (Julian Rodriguez, Arial Rodriguez, Cain Rodriguez, and Jacob Rodriguez), and Carlos O. Rodriguez's parents (Maria Sanchez de Rodriguez and Abundio Rodriguez S.) have suffered damages in the past and will sustain damages in the future, including pecuniary losses, loss of services, loss of companionship and society, mental anguish, and loss of inheritance, for which recovery and damages are sought under the Texas Wrongful Death Act in an amount far in excess of the minimal jurisdictional limits of this Court.

**VIII.
PRE-JUDGMENT AND POST-JUDGMENT INTEREST**

8.1 Plaintiffs seek pre-judgment and post-judgment interest as provided by law.

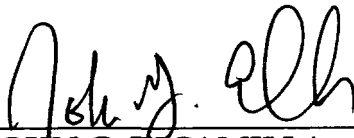
**IX.
JURY DEMAND**

9.1 Plaintiffs request a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, that this cause be set down for trial before a jury, and that Plaintiffs recover judgment of and from the Defendants for their damages, in such amount as the evidence may show and the jury may determine to be proper, together with pre-judgment interest and post-judgment interest, costs of suit, and such other and further relief as Plaintiffs may show themselves to be entitled.

Respectfully submitted,

WATTS LAW FIRM, L.L.P.
Texas State Bank Building, Suite 220
2314 West University Drive
Edinburg, Texas 78539
Phone: 956.381.0500
Facsimile: 956.381.4744

By: 
JOHN G. ESCAMILLA
State Bar No. 00793699
Federal ID. 23483
MIKAL C. WATTS
State Bar No. 20981820
Federal ID. 12419

and

ARMANDO MARTINEZ
ATTORNEY AT LAW
Route 10 Box 515
Edinburg, Texas 78539.2506
Phone: 956.383.0170
Facsimile: 956.381.5559
State Bar No. 13140000
Federal ID. 3497

ATTORNEYS FOR PLAINTIFFS

M-05-374

JS 44 (Rev 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Lucinda Natalia Ramirez, Julian Rodriguez, Azil Rodriguez, Cain Rodriguez, Jacobo Rodriguez, Maria Sanchez de Rodriguez, Abundio Rodriguez

(b) County of Residence of First Listed Plaintiff Hidalgo County, TX

(EXCEPT IN U.S. PLAINTIFF CASES)

phone (956) 381-0500

(c) Attorney's (Firm Name, Address, and Telephone Number)

John C. Escamilla, Watts Law Firm, Texas State Bank Bldg, Suite 220, 2314 W. University St., Edinburg, TX 78539

DEFENDANTS

Contract Freighters, Inc.
Bardine Mitchell

County of Residence of First Listed Defendant Davison, Michigan

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Larry Warren

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|----------------------------|---------------------------------------|
| PTF | DEF | PTF | DEF |
| <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of This State | Incorporated or Principal Place of Business in This State | | |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen of Another State | Incorporated and Principal Place of Business in Another State | | |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country | Foreign Nation | | |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgement

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

N/A - Diversity 28 U.S.C. §1332

Brief description of cause:

Negligence - auto accident

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

Nov. 16, 2005

SIGNATURE OF ATTORNEY OF RECORD

John M. Elter

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____